

CSN has gone even further: It has mounted a high-level publicity plan to attack ASC's launch, contacted members of Congress, threatened cable operators, and encouraged programming product providers not to supply Rainbow. CSN has even gone so far as to contact major Cablevision stockholders to put pressure on Cablevision to carry CSN. Such tortious interference is undoubtedly anticompetitive, but that is the level CSN is willing to go to prevent ASC's launch and success. The Commission should not become an unwitting accomplice to CSN's strategy.

V. CSN CAN USE COMMERCIAL LEASED ACCESS TO OBTAIN CARRIAGE ON CABLEVISION'S SYSTEMS

50. CSN complains that Cablevision has not carried the Service on its New York systems, despite the alleged popularity of the Service. In such a case, the Communications Act and the Commission's rules provide a perfect solution short of foreclosing competition by chilling negotiations between cable operators and programmers: commercial leased access. As the Commission concluded in its recent order, in adopting leased access, "Congress was concerned not only with ensuring access for unaffiliated programmers, but also with assuring that cable operators do not exercise editorial control in choosing which unaffiliated programmers obtain access to a limited percentage of channel capacity."^{20/} To further this goal, the Commission adopted a new formula that reduced the maximum rate a cable operator may charge for leasing a channel. The Commission also allowed programmers to lease channel capacity on a part-time basis. In adopting an average implicit fee formula, the Commission concluded that

^{20/} Implementation of Sections of the Cable Television Consumer Protection Act of 1992 -- Leased Commercial Access, Second Report and Order, FCC 97-27, at 7 ¶ 9 (Feb. 4, 1997).

there will now be "additional opportunities for diverse, unaffiliated programmers to enter the marketplace." ^{21/}

51. Leased access is tailor-made for CSN's Service. As evidenced by the letters it attached as exhibits to its complaint, CSN believes that a tidal wave of support exists for its Service. If this is in fact true, leased access will provide CSN a simple and quick route to expand its capacity and turn a profit while doing so. Moreover, CSN's expansion would no longer be affected by Cablevision's decisionmaking process. Leased access would also give CSN an opportunity to establish itself as a more attractive cable programmer. Despite this reasonable option, CSN has not requested leased access from Cablevision. Because CSN has a viable option for gaining carriage to Cablevision's systems, the Commission should dismiss CSN's complaint.

RESPONSE TO NUMBERED PARAGRAPHS

Cablevision, while denying any allegation not specifically admitted herein, responds to numbered paragraphs of the complaint as follows:

1. No response is necessary to paragraph 1 because it is a legal conclusion or a request for relief. To the extent that paragraph 1 is not a legal conclusion, Cablevision denies the allegations in that paragraph.

2. Cablevision is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2.

^{21/} Id. at 19 ¶ 35.

3. Cablevision admits that it is a cable operator and that its address and telephone number are correct.

4. Admit.

5. No response is necessary to paragraph 5 because it is a legal conclusion or a request for relief.

6. Cablevision admits that CSN distributes the Service. On information and belief, CSN is an independent programmer. Cablevision is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 6.

7. Cablevision operates cable systems in 15 states. Cablevision admits the remaining allegations in paragraph 7.

8. Cablevision denies that Rainbow is currently wholly-owned. Cablevision admits the remaining allegations in paragraph 8.

9. Cablevision is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9.

10. Cablevision admits that it was widely reported that Liberty Sports was an investor in CSN. Cablevision is without knowledge or information sufficient to form a belief as to what Ed Frazier told CSN. Cablevision admits that Rainbow has long considered launching a vintage sports channel, but denies that Rainbow threatened to do so to obtain an interest in CSN.

11. Cablevision admits that Frazier approached Rainbow to offer Rainbow an opportunity to invest in CSN. Cablevision further admits that Josh Sapan has met with Greenberg and Bedol and has discussed, on occasion, the possibility of Rainbow purchasing CSN. Cablevision is without knowledge or information sufficient to form a belief as to what

Frazier told CSN. Cablevision denies that it ever conditioned carriage of CSN on obtaining an financial interest in CSN.

12. Cablevision denies that it ever discussed a financial interest in CSN. Cablevision admits that Sapan, on occasion, expressed Rainbow's interest in buying CSN. Cablevision denies that it refused to meet with CSN representatives before the Service's launch.

13. Cablevision admits that Mac Budill spoke with Greenberg in May 1995 after Greenberg had earlier called to inquire about carriage on Cablevision's systems.

14. Cablevision admits that Cablevision and CSN negotiated a master affiliation agreement that was executed in August 1995. Cablevision admits that it was interested in completing the agreement so that it could have the option to launch the Service upon the completion of a system rebuild.

15. Cablevision admits that the master affiliation agreement specifies prices, terms, and condition under which it could, at its option, carry the Service on its systems. Cablevision further notes that it informed CSN on numerous occasions that it considered the rates too high and that they would have to be addressed on a case-by-case basis. Cablevision admits the second sentence of paragraph 15. Cablevision further admits that it anticipated, but never promised, to launch the Service on that system at that time.

16. Cablevision admits that Budill told CSN that there might be opportunities for launches on other systems in the future on a system-by-system basis.

17. Cablevision admits that it anticipated launching on the Norwalk system and that it may follow that launch with one on the Bridgeport system.

18. Admit.

19. Cablevision admits that Budill called Greenberg in late August and informed him that the Norwalk launch had been put on hold. Cablevision denies that Budill identified Liberty Sports as the cause of the delay. Cablevision denies the remaining allegations in paragraph 19.

20. Cablevision states that Budill has no recollection of a second call with Greenberg. Cablevision admits that Bob Shrader was told that he could not launch the Service on the Norwalk system.

21. Cablevision admits that it did not launch the Service on the Norwalk system in September 1995. Cablevision further admits that the channel listed on the Digicipher form is now filled. Cablevision denies that it agreed to launch the Service on its Long Island, Yonkers, and New Jersey systems.

22. Cablevision admits that the Service was not carried on any of its systems in 1995. Cablevision denies the remaining allegations in paragraph 22.

23. Cablevision states that Charles Dolan has no recollection of a phone call with Greenberg in early October 1995. Cablevision admits that Peter Low spoke with Greenberg in late September 1995.

24. Cablevision admits that it received Greenberg's October 3, 1995 letter. Cablevision states that Low addressed all the issues raised in the letter in his phone call with Greenberg preceding the letter.

25. Cablevision is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first two sentences of paragraph 25. Cablevision admits that the MSOs listed are reported to have equity interests in video programming services. Cablevision denies the last sentence of paragraph 25 and notes, on information and belief, that

the Service reaches approximately 100,000 of TCI's 19 million subscribers and Time Warner does not carry the Service on its New York systems.

26. Cablevision admits that the Service was carried in on WBIS, a must carry station, in the New York ADI from July 1, 1996 through January 21, 1997.

27. Cablevision is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27.

28. Cablevision admits that some system managers expressed interest in the Service. Cablevision further admits that it launched the Service in an "Optimum" package on its Boston and Brookline systems in March 1996, after negotiating two amendments to the master affiliation agreement.

29. Cablevision admits that it carries the Service on its Boston and Brookline systems in Massachusetts and on its North Olmstead and Berea systems in Ohio. Cablevision further admits that some system managers expressed interest in the Service. Cablevision also states that the decisions to launch the Service on a particular system must be approved by its corporate office in Woodbury, New York.

30. Cablevision admits that it discussed carriage issues with CSN during 1996. Cablevision denies the remaining allegations in paragraph 30.

31. Cablevision admits that after a cable event, Sapan and Ratner of Rainbow discussed the purchase of CSN with Greenberg and Bedol. Cablevision admits that Greenberg informed Sapan and Ratner that CSN had completed a major refinancing and was uninterested in a possible sale. Cablevision notes that CSN nevertheless considered a sale to Rainbow.

Cablevision denies that either Sapan or Ratner discussed James Dolan's desire to own CSN or that Sapan said Dolan was "obsessed" with buying CSN.

32. Cablevision admits that Michael Bair and Mark Shuken of Rainbow met with Greenberg and Bedol two days later. Cablevision further admits that Bair and Shuken presented four ideas, including the purchase of CSN. Cablevision denies that any scenario was presented as "preferred." Cablevision further denies that Bair stated that James Dolan was talking about buying CSN "in every meeting we have." Cablevision also denies that Bair asked to examine CSN's books to structure an offer. Cablevision further states that Greenberg and Bedol indicated that they would investigate selling and would discuss the issue at CSN's next board meeting.

33. Cablevision admits that on October 9, 1996 Greenberg met with Shuken and that Ratner and Bair each joined the meeting briefly. Cablevision also admits that Ratner asked whether CSN was interested in selling and at what price. Cablevision admits that Greenberg then stated that CSN was not for sale. Cablevision further admits that when Shuken and Bair were present, Greenberg indicated that he and Bedol had presented the proposal to sell CSN to CSN's board of directors, but the board rejected the idea. Cablevision admits that Greenberg and Ratner previously discussed a price for CSN. Cablevision denies the remaining allegations in paragraph 33.

34. Cablevision denies that Ratner called Greenberg to inquire again about the sale of CSN.

35. Cablevision refuses to speculate about an alleged conversation with an unidentified "intermediary." Cablevision denies that Marc Lustgarten ever stated that Cablevision would not launch CSN.

36. Cablevision admits that it issued a statement on March 3, 1997 concerning its efforts to expand its channel capacity to carry any program service in which its subscribers may have an interest. Cablevision further admits that Romance Classics is the only new launch on its cable systems in Brooklyn and the Bronx in 1997. Cablevision notes that the Act and the Commission's rules permit a cable operator to carry programming services affiliated with it.

37. Cablevision admits that Rainbow will launch ASC on July 9, 1997. Cablevision denies the remaining allegations in paragraph 37.

38. Cablevision admits that CSN presented it with an amendment to the master affiliation agreement that addressed exclusivity. The proposed amendment speaks for itself. Cablevision further admits that it did not accept CSN's exclusivity offer.

39. Cablevision denies that it demanded exclusivity in Connecticut as a requirement for carriage on any additional Cablevision systems. Cablevision notes that it began previewing CSN on its North Olmstead and Berea, Ohio systems on October 1 and October 24, 1996, respectively, and launched CSN full-time on these systems on April 15, 1997. Cablevision denies that Peter Low ever conditioned the launch of CSN on exclusivity in Connecticut, New York, New Jersey, and Boston. Cablevision admits that Low indicated that exclusivity is a valuable right.

40. Cablevision denies that Low told Greenberg that exclusivity in Connecticut was mandatory in order for it to launch the Service on any additional systems. Cablevision admits that Greenberg sent Cablevision a revised exclusivity agreement and that Cablevision did not respond to it. Cablevision denies the remaining allegations in paragraph 40.

41. Cablevision admits that during a phone call in mid-January 1997, Low asked about the status of Connecticut and whether the authorization of SNET was reversible. Cablevision further states that Greenberg said he would look into it.

42. Denied.

43. Cablevision admits that Bedol called Low to ask about carriage on additional Cablevision systems. Cablevision further admits that the possibility of exclusivity in Connecticut was discussed and that Bedol later called back to inform Low that SNET had been authorized to launch the Service. Cablevision denies the remaining allegations in paragraph 43.

44. Cablevision admits the first sentence of paragraph 44. Cablevision denies the second sentence of paragraph 44.

45. Denied.

46. Cablevision admits it entered into a master affiliation agreement with CSN in August 1995, which did not obligate Cablevision to carry the Service on any system. Cablevision further admits that CSN is currently carried on its Boston and Brookline systems in Massachusetts and on its North Olmstead and Berea systems in Ohio. Cablevision denies the remaining allegations in paragraph 46.

47. Cablevision admits that it does not currently carry the Service on its New York systems but notes that WBIS, a local broadcaster, was carrying the Service on those systems from July 1, 1996 through January 21, 1997. Cablevision denies the remaining allegations in paragraph 47.

48. Cablevision repeats its responses to paragraphs 1 through 47.

49. No response is necessary to paragraph 49 because it is a legal conclusion or a request for relief.

50. No response is necessary to paragraph 50 because it is a legal conclusion or a request for relief.

51. No response is necessary to paragraph 51 because it is a legal conclusion or a request for relief.

52. Denied.

53. No response is necessary to paragraph 53 because it is a legal conclusion or a request for relief. To the extent a response is necessary, Cablevision denies the allegations in paragraph 53.

54. Cablevision repeats its responses to paragraphs 1 through 54.

55. Denied.

56. No response is necessary to paragraph 56 because it is a legal conclusion or a request for relief. To the extent a response is necessary, Cablevision denies the allegations in paragraph 56.

57. No response is necessary to paragraph 57 because it is a legal conclusion or a request for relief. To the extent a response is necessary, Cablevision denies the allegations in paragraph 57.

58. No response is necessary to paragraph 58 because it is a legal conclusion or a request for relief. To the extent a response is necessary, Cablevision denies the allegations in paragraph 58.

RESPONSE TO REQUEST FOR RELIEF

CSN's request for relief speaks volumes about the purpose of its complaint. It asks the Commission to order Cablevision to remove an affiliated programming service from its systems to accommodate the Service's immediate carriage. Clearly, CSN intends this request for relief to impede the launch of Rainbow's American Sports Classics service. This effort to foreclose the launch of ASC is anticompetitive and would deny consumers the opportunity to view a superior vintage sports service. Neither section 616 nor the Commission's rules were intended to be used to prevent competition, but that is exactly what CSN is attempting to do. The Commission should dismiss CSN's complaint and request for relief in their entirety.

CSN's request for relief should be rejected for other reasons as well. First, CSN's Service is receiving carriage on the Boston and Brookline systems as well as the North Olmstead and Berea systems. While CSN is dissatisfied that it is not receiving carriage in New York, it has no right to additional carriage or to any carriage. Indeed, there are numerous reasons that CSN has not received additional carriage ranging from its own decision to be carried by WBIS in New York to high rates and limited channel capacity. The Commission is without authority to second guess Cablevision's decisions.

Second, the master affiliation agreement under which CSN's Service seeks carriage does not obligate Cablevision to carry the Service on any system. In other words, Cablevision has complied fully with the law and with all the terms of the agreement signed between the parties. Ordering Cablevision to carry the Service on all its systems would constitute a rewriting of the agreement. The Commission has no authority to do to do this.

Third, the Commission may not order Cablevision to remove a preexisting affiliated service from its systems to make room for CSN's Service. Such a decision would be unprecedented. Cablevision is in full compliance with the Act and the Commission's rules, which permit a cable operator to carry affiliated programming on as much as 40 percent of its systems' activated channels. For the Commission to order the removal of an affiliated programmer to accommodate the Service would deny Cablevision its rights under the statute and the rules. This result is even more intolerable because Cablevision would be forced into the position of explaining to its many subscribers why a popular service has been replaced by a mediocre service in which few have expressed interest.^{22/}

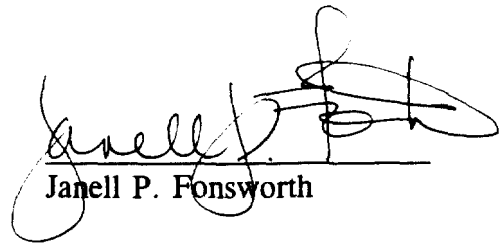
CONCLUSION

Cablevision has not violated section 616 or the Commission's rules. It has provided CSN's Service with carriage on four systems even though it does not have a financial interest in CSN or possess exclusive distribution rights. These facts are dispositive. CSN's complaint

^{22/} CSN implies that Cablevision engaged in unlawful activity when Cablevision launched Romance Classics, an affiliated service, on its Brooklyn and Bronx, New York cable systems. Complaint at ¶ 36. Cablevision was well within its legal rights to carry this affiliated service, and CSN has failed to make any showing otherwise.

CERTIFICATE OF SERVICE

I, Janell P. Fonsworth, hereby certify that on this 28th day of April, 1997, I caused copies of the foregoing "Public Version" Answer to be delivered by hand to the following:



Janell P. Fonsworth

Robert A. Garrett
Philip W. Horton
Richard L. Rosen
Robert M. Cooper
Arnold & Porter
555 12th Street, N.W.
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Deborah Klein
Assistant Division Chief
Consumer Protection and Competition Division
Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W., Room 702D
Washington, D.C. 20554



EXHIBIT 1

MATERIAL REDACTED



RECYCLE!

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

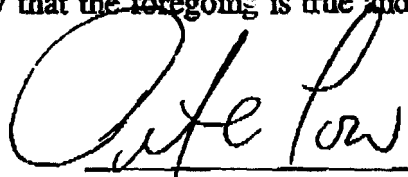
In the Matter of)	
)	
CLASSIC SPORTS NETWORK, INC.,)	
)	
Complainant,)	
)	File No. _____
v.)	
)	
CABLEVISION SYSTEMS CORPORATION,)	
)	
Defendant.)	

DECLARATION OF PETER LOW

I, Peter Low, declare as follows:

1. I am the Vice President of Programming for Cablevision Systems Corporation ("Cablevision").
2. I submit this declaration in response to the Carriage Agreement Complaint of Classic Sports Network, Inc., brought against Cablevision pursuant to section 616 of the Communications Act, as amended, and the Commission's rules thereunder.
3. I have read the Answer of Cablevision. Other than those facts of which official notice can be taken, the facts contained therein of which I have personal knowledge are true and correct.

I declare under the penalty of perjury that the foregoing is true and correct.


Peter Low

April 21, 1997

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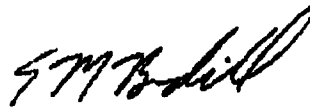
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800-222-JB10

ALL-STATE LEGAL

1. I am the Director of Programming for Cablevision Systems Corporation ("Cablevision").
2. I submit this declaration in response to the Carriage Agreement Complaint of Classic Sports Network, Inc., brought against Cablevision pursuant to section 616 of the Communications Act, as amended, and the Commission's rules thereunder.
3. I have read the Answer of Cablevision. Other than those facts of which official notice can be taken, the facts contained therein of which I have personal knowledge are true and correct.

I declare under the penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Mac Budill", written over a horizontal line.

Mac Budill

April 24, 1997

FILED

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

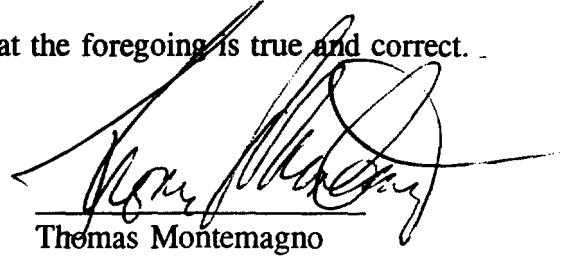
In the Matter of)	
)	
CLASSIC SPORTS NETWORK, INC.,)	
)	
Complainant,)	
)	File No. _____
v.)	
)	
CABLEVISION SYSTEMS CORPORATION,)	
)	
Defendant.)	

DECLARATION OF THOMAS MONTEMAGNO

I, Thomas Montemagno, declare as follows:

1. I am the Programming Manager for Cablevision Systems Corporation ("Cablevision").
2. I submit this declaration in response to the Carriage Agreement Complaint of Classic Sports Network, Inc., brought against Cablevision pursuant to section 616 of the Communications Act, as amended, and the Commission's rules thereunder.
3. I have read the Answer of Cablevision. Other than those facts of which official notice can be taken, the facts contained therein of which I have personal knowledge are true and correct.

I declare under the penalty of perjury that the foregoing is true and correct.



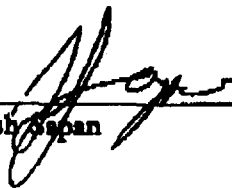
Thomas Montemagno

April 21, 1997

FI/65356.1

1. I am President of Rainbow Media Holdings, Inc., a subsidiary of Cablevision Systems Corporation ("Cablevision").
2. I submit this declaration in response to the Carriage Agreement Complaint of Classic Sports Network, Inc., brought against Cablevision pursuant to section 616 of the Communications Act, as amended, and the Commission's rules thereunder.
3. I have read the Answer of Cablevision. Other than those facts of which official notice can be taken, the facts contained therein of which I have personal knowledge are true and correct.

I declare under the penalty of perjury that the foregoing is true and correct.


Josh Sapan

April 21, 1997

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